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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDEMNITY INSURANCE COMPANY OF : ECF CASE
NORTH AMERICA, a/s/o NCR Corporation,
:
Plaintiff, : 08 Civ. 00008 (LAP)
:
- against - : **COMPLAINT**
:

UNITED PARCEL SERVICE, INC.;
UPS SUPPLY CHAIN SOLUTIONS, INC. :

Defendants. :

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Plaintiff, through its undersigned attorney, alleges as follows for its complaint
against defendants:

1. Plaintiff Indemnity Insurance Company of North America is a corporation
organized under the laws of, and with its principal place of business in, the State of
Pennsylvania, and sues herein as the subrogated insurer of NCR Corporation, and for and
on behalf of the shipper, consignee and owner of the cargo as their interests may appear.

2. Defendants United Parcel Service, Inc. (“UPS”) and UPS Supply Chain
Solutions, Inc. (“UPS-SCS”) are believed to be corporations organized under the laws of,
and with their principal places of business in, certain of the fifty states other than
Maryland. UPS is believed to be a New York corporation with its principal place of
business in Atlanta, Georgia. UPS-SCS is believed to be a Delaware corporation with its
principal place of business in Atlanta, Georgia.

3. This Court has *in personam* jurisdiction over defendants, who conduct business in the State of New York as common carriers of cargo for hire including the pickup and delivery of shipments in New York and the provision of services related thereto.

FIRST CAUSE OF ACTION

4. Plaintiff repeats and realleges the allegations in paragraphs 1 through 3 of this complaint.

5. This Court has federal question subject matter jurisdiction pursuant to 28 USCA Sec. 1331. There is also diversity, pendent, ancillary and supplemental jurisdiction as to certain aspects of the claim in suit. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

6. This cause of action arises under a treaty of the United States, specifically the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000, T.S. No. 876 (1934), reprinted in note following 49 U.S.C. Sec. 1502 (the "Warsaw Convention"), and certain amendments, protocols and successor treaties thereto in effect in the country of origin and destination at the time of shipment. Alternatively, this cause of action is governed by the Convention for Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999, reprinted in S. Treaty Doc. No 106-45, 1999 WL 33292734 (2000) (entered into force Nov. 4, 2003) ("Montreal Convention").

7. This action involves loss and damage to the shipments which are described more fully in the annexed Schedules A and B, which are incorporated herein by reference.

8. Said loss and damage was the result of defendants' fault, wanton neglect, and willful misconduct in that defendants, their agents, servants, connecting carriers, subcontractors, terminal operators, truck drivers, warehousemen and employees failed to properly handle, carry, protect, transfer and care for the cargo in question and in that

defendants had no proper and effective procedures to receive, handle, carry, protect transfer and care for the cargo.

9. By reason of the aforesaid plaintiff, and those on whose behalf it sues, has sustained damages in the amount of \$152,426.00, no part of which has been paid although duly demanded.

10. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

SECOND CAUSE OF ACTION

11. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 10 of this complaint.

12. Defendants' air waybills were not issued in a timely manner and did not comply with, or contain all the particulars required by, the Warsaw Convention, including Article 8.

13. Therefore, pursuant to the Warsaw Convention, including Article 9, defendants may not avail themselves of the provisions of the Convention which allegedly exclude or limit their liability.

THIRD CAUSE OF ACTION

14. Plaintiff repeats and realleges the allegations in paragraphs 1,2,3,5,7,8,9 and 10 of this complaint.

15. When the cargo was received into the care, custody and control of defendants, or those entities acting on their behalf, the cargo was in good order and condition. However, defendants failed to make delivery of the entire cargo at the intended destination in the same order and condition. Instead the cargo was damaged while in the care, custody and control of defendants and was rendered unfit for intended usage.

16. Therefore, defendants, as common carriers, bailees, and/or warehousemen for hire are liable to plaintiff for the claimed loss and damage to the cargo in suit.

WHEREFORE, plaintiff demands judgment against defendants:

- (a) for the sum of \$152,426.00;
- (b) for prejudgment interest at the rate of 9% per annum;
- (c) for the costs and disbursements of this action;
- (d) for such other and further relief as the Court deems proper and just.

Dated: New York, New York
December 13, 2007

LAW OFFICES,
DAVID L. MAZAROLI

*s/*David L. Mazaroli

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SCHEDULE A

Subrogated Insurer:	Indemnity Insurance Company of North America
Insured:	NCR Corporation
Waybill No.:	5438358948
Dated:	April 10, 2006
Origin:	West Columbia, South Carolina
Destination:	France
Commodity:	NCR Enterprise storage cabinet with disk arrays
Claim Amount	\$78,174.00
UPS File:	CC200792253
INAMAR File	456S737304-7
DLM File:	7G-1512

SCHEDULE B

Subrogated Insurer:	Indemnity Insurance Company of North America
Insured:	NCR Corporation
Waybill No.:	5448436950
Dated:	September 12, 2006
Origin:	West Columbia, South Carolina
Destination:	Hong Kong
Commodity:	NCR disk cabinets
Claim Amount	\$74,252.00
UPS File:	X20-799266
INAMAR File	456S738499-3
DLM File:	7G-1570